

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,
v.
DANIEL R. BLACK, *et al.*,
Defendants.

NO. CV-07-355-RHW

**ORDER DENYING
DEFENDANTS DANIEL R.
BLACK AND MAIRE E.
BLACK'S MOTION TO DISMISS**

Before the Court are Defendants Daniel R Black's and Maire E. Black's Motion to Dismiss (Ct. Rec. 136). The motion was heard without oral argument.

Defendants argue that the Court lacks subject matter jurisdiction because the United States have failed to establish that the Attorney General of the United States and Secretary of the Treasury have authorized the suit. Defendants rely on 26 U.S.C. § 7401, which states:

No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, shall be commenced unless the Secretary or his delegate authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

Ordinarily the Court will presume that a civil tax enforcement action has been commenced with the proper authorization by the Secretary of the Treasury and the United States Attorney General. *Palmer v. IRS*, 116 F.3d 1309, 1311 (9th Cir. 1997). A letter from the legal office of an agency of the Department of Treasury authorizing the commencement of a lawsuit is sufficient to establish the first requirement of section 7401. *See United States v. Walters*, 638 F.2d 947, 940

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1 (6th Cir. 1981).

2 The United States Attorney, as a delegate of the Attorney General, has the
3 statutory authority to institute forfeiture proceedings. *Walters*, 638 F.2d at 951.

4 As the Sixth Circuit explained,

5 While the United States Attorney General has broad
6 supervisory power over all United States Attorneys, 28 U.S.C. § 519,
7 the need for an efficient administration of our complex and ever
8 burgeoning justice system has necessitated delegation of the Attorney
9 General's supervisory powers to the United States Attorney. Pursuant
10 to 28 U.S.C. § 547, the United States Attorney has broad authority to
11 represent the government and prosecute cases. The authority to
12 institute and prosecute forfeiture proceedings for the violation of all
13 revenue laws is specifically delegated to each United States Attorney
14 in Section 547(4).

15 *Id.*

16 A United States Attorney is authorized to commence an action to convert an
17 Internal Revenue Service assessment into a judgment, 28 U.S.C. § 542(2), and a
18 United States Attorney may delegate an assistant United States Attorney to
19 commence such an action on her behalf, 28 U.S.C. § 542.

20 Here, the Government has provided a May 4, 2006 letter from the Area
21 Counsel of the Department of Treasury, Internal Revenue Service, Office of Chief
22 Counsel, Small Business/Self-Employed Division Counsel to the Assistant
23 Attorney General, Tax Division, Department of Justice requesting that the
24 Department of Justice file an action against Daniel L. Black and Maire E. Black
25 and any other necessary parties to collect the federal tax assessments of income tax
26 for years 1987 through 2000, and to reduce the tax liabilities to judgment and
27 foreclose the federal tax liens against the taxpayers' real property including their
28 personal residence. (Ct. Rec. 22-2, Ex. 1).

29 Defendants argue that a letter from Area Counsel for the Department of
30 Treasury is not sufficient. As set forth in *Hughes v. United States*, the Secretary of
31 Treasury has the power to collect taxes, and such power can be delegated to local
32 IRS agents. 953 F.2d 531, 536 (9th Cir. 1992). Notably, Defendant has not
33 provided any case law that supports his argument that the authorization must be

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from the Secretary of the Treasury, and not from a delegated official. Moreover, 26 U.S.C. § 7701(1) defines the term “Delegate” to mean:

when used with reference to the Secretary of the Treasury means any officer, employee, or agency of the Treasury Department duly authorized by the Secretary of the Treasury directly, or indirectly by one or more redelegations of authority to perform the function mentioned or described in the context.

Publication of a delegation order is not required to effect a valid delegation of the Secretary of Treasury to commence this action. *United States v. Saunders*, 951 F.2d 1065, 1067-78 (9th Cir. 1991).

Defendants also argue that the letter is not authorization; rather, it is a mere request and as such does not meet the requirements of section 7401. Again, Defendants have not provided any case law in support of this theory. The Court finds that the letter fulfills the spirit and purpose of section 7401.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendants Daniel R Black's and Maire E. Black's Motion to Dismiss (Ct. Rec. 136) is **DENIED**.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to counsel.

DATED this 16th day of July, 2010.

s/Robert H. Whaley
ROBERT H. WHALEY
United States District Judge